No. 08-815

Supreme Court, U.S.
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In The

# Supreme Court of the United States

ROBERT DEUPREE,

*Petitioner,*

vs.

WORKERS COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, UNINSURED EMPLOYERS BENEFIT TRUST FUND AND MON DOE 43,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District**

## BRIEF IN OPPOSITION

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## I.

## QUESTIONS PRESENTED

1. Whether certiorari should be granted where California administrative and appellate courts have decided that Respondent has met her burden of proof and that Petitioner has provided no evidence to refute the causation of the Respondent's disability.

2. Whether certiorari should be granted when the California statutory scheme allows the admission of hearsay which is reliable.

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## IV.

## INTRODUCTION

This Court is a court of equity. Petitioner asks this Court to provide the equity of due process. Yet Petitioner comes with unclean hands. They have violated regulatory and statutory law of California, which makes it mandatory to maintain a workers' compensation insurance policy. They have violated the California State Constitution, which they so eloquently cite in their own Petition. Therefore, the employer has given up his right to be sued in civil court to provide benefits as a result of an industrially-caused accident.

## V.

## COUNTER STATEMENT OF FACTS

The history presented by Petitioner is almost correct. However, it is slanted in such a way as to mislead this Court and make the facts semi-untrue.

Respondent herein was an adult film actress hired by Petitioner to star in an adult film. Respondent Doe had monthly HIV tests during this period, all of which were negative. During filming she had unprotected sex at the employer's request, with an actor who had forged his HIV test and was actually HIV positive. After the filming Ms. Doe tested positive for HIV.

Contrary to Petitioner's statement, all the other participants in the movie that Respondent had sex

with had provided clear documentation of negative HIV tests. The HIV positive actor, Mark Wallace, who had forged his HIV test was the only person who could have caused Respondent's HIV. Witnesses testified that it was this performer who caused the infection per interviews in Adult Video News. Further testimony by both the director and production chief confirmed that it was this actor who was infected. At no time did Petitioner present any evidence that another party caused the Respondent's HIV.

Unrebutted testimony was taken from witnesses in the adult film industry, noting that Mr. Wallace was the source of the HIV outbreak in 1998 which caused havoc in the industry.

The medical evidence was unrebutted, and also found applicant sustained the HIV infection in the course and scope of her employment.

## VI.

## REASONS FOR DENYING THE PETITION

A. Petitioner's argument that there was a denial of due process is spurious. It is an attempt by an illegally uninsured employer to delay and deny payment to an injured worker. Petitioner presents no evidence that he was denied due process, or that the California workers compensation system in and of itself is falling apart and denies uninsured employers due process.

Due process existed. Respondent presented multiple days of testimony, with witnesses. Respondent presented substantive medical evidence. The trial was heard by a trier of fact who had previously been a certified specialist in the area of workers compensation, was well-respected and had numerous trials on the bench.

The problem is Petitioner presented no evidence to refute the evidence presented by Respondent, nor could they. They had competent counsel. If they had evidence, they would have presented it.

Further, California's system of appeal is unique. The first level of appeal is the Workers Compensation Appeals Board. This can be a retrial of all issues. The Workers Compensation Appeals Board has the right to retry the facts of the case based upon the evidence presented. Did Petitioner file an appeal to the Workers Compensation Appeals Board? Of course. Did they set forth their best arguments? Of course they did. Yet Petitioner's claims were denied and the judge's decision was incorporated.

Legally, steps three and four are to the California Court of Appeal and eventually California Supreme Court. The legal issues were again denied. Further, at no time did they bring up the issue to the California courts that there was a denial of due process as a result of hearsay evidence.

B. Respondent's contentions that the California statutory system is unjust and inequitable is inappropriate. This Court is not presented with any

federal or jurisdictional issue. It is presented with a spurious argument of due process.

In 1907 California enacted its first legislation on limitations between the fellow servant rule. California's constitution was amended, Article 14, Labor Relations section 4 (formerly Article XX, section 21) to enact a law similar to what we have today.

The law was amended numerous times and became a political football. Section 4 allowed the California legislature to create and enforce a complete system of workers compensation disability.

The constitutionality of California workers compensation law has been frequently tested, and numerous cases have held the California statute is a valid exercise of state power. See *City and County of San Francisco v. WCAB (Wiebe)* (1978) 22 Cal.2d 103.

Administrative Law Judges in the California Workers Compensation system have been trained in-house and through continuing education. Most have come up the ranks as certified specialists.

The administrative agency and the statute provide the allowance of hearsay evidence. Petitioner admits the same, citing California Labor Code section 5708, that is, judges are not bound by the statutory rules of evidence and procedure, and make inquiry in the matter through oral testimony and records which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of the law. Simply put, it is not a liberal conspiracy. It is a

fair system which fairly adjudicates controversies between injured workers and employers/insurance companies. Petitioner's attempt to characterize it as a kangaroo court is verbiage, not fact.

The same rights afforded to the Respondent, Ms. Doe, were afforded to the Petitioner herein. There is no basis for the appeal to this Court.

## VII.

## CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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